

AMENDED IN ASSEMBLY APRIL 15, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2873**

**Introduced by Assembly Member Members Frommer and Correa**

February 25, 2002

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An act to ~~add Section 5062.5 to~~ amend Sections 5037 and 5100 of, and to add Sections 5062.3, 5064, and 5065 to, the Business and Professions Code, relating to accountancy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2873, as amended, Frommer. ~~Auditing services~~ Accounting.

Existing law establishes the California Board of Accountancy, in the Department of Consumer Affairs, for the purpose of licensing and regulating public accountants. In addition to other requirements, a licensee is required to issue a report conforming to professional standards upon completion of a compilation, review, or audit of financial statements.

This bill would provide that a licensee would not be considered independent for purposes of certifying the financial statements of an audit client that is a publicly traded corporation if the licensee has audited the financial statements of that client for more than 4 consecutive fiscal years.

This bill would also require audit working papers, as defined, to contain sufficient documentation to enable a reviewer with relevant knowledge and experience, but having no previous connection with an auditing engagement, to understand the nature, timing, extent, and results of auditing or other procedures performed, evidence obtained, conclusions reached, and the identity of the persons who performed and

*reviewed the work. The bill would create a rebuttable presumption where the requirements are not met that the procedures were not applied, tests were not performed, information was not obtained, and pertinent conclusions were not reached.*

*This bill would require audit working papers to be maintained for the longer of a 7-year period or a period sufficient to satisfy professional standards and comply with applicable laws and regulations. The bill would also require licensees to maintain a written audit working paper retention and destruction policy that sets forth the licensees practices and procedures.*

*This bill would authorize the board to adopt regulations regarding working papers, including regulations establishing a different retention period for specific categories of working papers where warranted.*

*Existing law requires a licensee to furnish to his or her client or former client, upon request, any accounting or other records belonging to, or obtained from or on behalf of, the client. Existing law authorizes a licensee furnishing these documents to make and retain copies of the documents when they form the basis for work done by him or her.*

*This bill would require a licensee furnishing documents to a client or former client pursuant to the above provisions to make and retain copies of documents of the client for a period of 7 years when they form the basis for his or her work.*

*Existing law authorizes the board to revoke, suspend, or refuse to renew any permit or certificate, or to censure the holder of that permit or certificate, for unprofessional conduct.*

*The bill would make willful destruction of records, as defined, unprofessional conduct subject to disciplinary action by the board.*

~~Existing law provides establishes the California Board of Accountancy in the Department of Consumer Affairs for the purpose of licensing and regulating public accountants.~~

~~This bill would prohibit a person or firm from providing auditing and nonauditing services to the same client.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 5062.5 is added to the Business and~~

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1     *SECTION 1. The Legislature finds and declares that it is*  
2     *necessary to enact legislation to provide consumer protection and*  
3     *audit integrity in the field of accountancy.*

4     *SEC. 2. Section 5037 of the Business and Professions Code is*  
5     *amended to read:*

6     5037. (a) All statements, records, schedules, working  
7     papers, and memoranda made by a licensee or a partner,  
8     shareholder, officer, director, or employee of a licensee, incident  
9     to, or in the course of, rendering services to a client in the practice  
10    of public accountancy, except the reports submitted by the licensee  
11    to the client and except for records ~~which~~ *that* are part of the  
12    client's records, shall be and remain the property of the licensee in  
13    the absence of an express agreement between the licensee and the  
14    client to the contrary. No such statement, record, schedule,  
15    working paper, or memoranda shall be sold, transferred, or  
16    bequeathed, without the consent of the client or his or her personal  
17    representative or assignee, to anyone other than one or more  
18    surviving partners or stockholders or new partners or stockholders  
19    of the licensee, or any combined or merged firm or successor in  
20    interest to the licensee.

21    (b) A licensee shall furnish to his or her client or former client,  
22    upon request and reasonable notice:

23    (1) A copy of the licensee's working papers, to the extent that  
24    those working papers include records that would ordinarily  
25    constitute part of the client's records and are not otherwise  
26    available to the client.

27    (2) Any accounting or other records belonging to, or obtained  
28    from or on behalf of, the client ~~which~~ *that* the licensee removed  
29    from the client's premises or received for the client's account. The  
30    licensee ~~may~~ *shall* make and retain copies of documents of the  
31    client *for a period of seven years* when they form the basis for work  
32    done by him or her.

33    (c) *Willful destruction of records, electronic, and written, as*  
34    *described in subdivisions (a) and (b), shall be grounds for*  
35    *disciplinary procedures pursuant to Article 6 (commencing with*  
36    *Section 5100).*

37    *SEC. 3. Section 5100 of the Business and Professions Code is*  
38    *amended to read:*

39    5100. After notice and hearing the board may revoke,  
40    suspend, or refuse to renew any permit or certificate granted under

Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct—~~which~~ *that* includes, but is not limited to, one or any combination of the following causes:

(a) Conviction of any crime substantially related to the qualifications, functions and duties of a certified public accountant or a public accountant.

(b) A violation of Section 478, 498, or 499 dealing with false statements or omissions in the application for a license, ~~or~~ in obtaining a certificate as a certified public accountant ~~or~~, in obtaining registration under this chapter, or in obtaining a permit to practice public accountancy under this chapter.

(c) Dishonesty, fraud, or gross negligence in the practice of public accountancy or in the performance of the bookkeeping operations described in Section 5052.

(d) Cancellation, revocation, or suspension of a certificate; *or* other authority to practice ~~or as a certified public accountant or a public accountant~~, refusal to renew the certificate or other authority to practice as a certified public accountant or a public accountant, or any other discipline by any other state or foreign country.

(e) *Violation of subdivision (c) of Section 5037.*

(f) Violation of Section 5120.

~~(f)~~

(g) Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter.

~~(g)~~

(h) Suspension or revocation of the right to practice before any governmental body or agency.

~~(h)~~

(i) Fiscal dishonesty or breach of fiduciary responsibility of any kind.

~~(i)~~

(j) Knowing preparation, publication or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information.

~~(j)~~

1 (k) Embezzlement, theft, misappropriation of funds or  
2 property, or obtaining money, property, or other valuable  
3 consideration by fraudulent means or false pretenses.

4 *SEC. 4. Section 5062.3 is added to the Business and*  
5 *Professions Code, to read:*

6 *5062.3. A licensee shall not be considered independent for*  
7 *purposes of certifying the financial statements of an audit client*  
8 *that is a publicly traded corporation if the licensee has audited the*  
9 *financial statements of that client for more than four consecutive*  
10 *fiscal years.*

11 *SEC. 5. Section 5064 is added to the Business and Professions*  
12 *Code, to read:*

13 *5064. (a) Audit working papers shall be a licensee's records*  
14 *of the procedures applied, the tests performed, the information*  
15 *obtained, and the pertinent conclusions reached in an audit*  
16 *engagement. They shall include, but are not limited to, programs,*  
17 *analyses, memoranda, letters of confirmation and representation,*  
18 *copies or abstracts of company documents, and schedules or*  
19 *commentaries prepared or obtained by the licensee.*

20 *(b) Audit working papers shall contain sufficient*  
21 *documentation to enable a reviewer with relevant knowledge and*  
22 *experience, having no previous connection with the audit*  
23 *engagement, to understand the nature, timing, extent, and results*  
24 *of the auditing or other procedures performed, evidence obtained,*  
25 *and conclusions reached, and to determine the identity of the*  
26 *persons who performed and reviewed the work.*

27 *(c) Failure of the audit working papers to document the*  
28 *procedures applied, tests performed, evidence obtained, and*  
29 *pertinent conclusions reached in an engagement shall raise a*  
30 *presumption that the procedures were not applied, tests were not*  
31 *performed, information was not obtained, and pertinent*  
32 *conclusions were not reached. This presumption shall be a*  
33 *rebuttable presumption affecting the burden of proof.*

34 *(d) Audit working papers shall be maintained by a licensee for*  
35 *the longer of the following:*

36 *(1) The minimum period of retention provided in subdivision*  
37 *(e).*

38 *(2) A period sufficient to satisfy professional standards and to*  
39 *comply with applicable laws and regulations.*

1 (e) Audit working papers shall be maintained for a minimum of  
2 seven years which shall be extended during the pendency of any  
3 board investigation, disciplinary action, or legal action involving  
4 the licensee or the licensee's firm. The board may adopt  
5 regulations to establish a different retention period for specific  
6 categories of audit working papers where the board finds that the  
7 nature of the working papers warrants it.

8 (f) Licensees shall maintain a written working paper retention  
9 and destruction policy that shall set forth the licensee's practices  
10 and procedures complying with this section.

11 SEC. 6. Section 5065 is added to the Business and Professions  
12 Code, to read:

13 5065. The board may adopt regulations to implement,  
14 interpret, and make specific provisions relating to working papers,  
15 including, but not limited to, the following:

16 (a) The required periods of working paper retention for specific  
17 categories of working papers.

18 (b) The definition of the term "working papers" and the content  
19 of working papers.

20 (c) Requirements for maintaining the safe custody and integrity  
21 of working papers.

22 (d) Requirements for licensees maintaining a working paper  
23 retention policy, and procedures for review and approval of  
24 working paper destruction.

25 (e) Procedures for the identification, dating, and retention of  
26 working papers.

27 ~~Professions Code, to read:~~

28 ~~5062.5. No person or firm shall provide both auditing and~~  
29 ~~nonauditing services to the same client.~~